

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

WILLIAM JOSEPH WEBB, JR.,)	
)	
Plaintiff,)	
)	
v.)	C. A. No. 07-31-GMS
)	
FIRST CORRECTIONAL MEDICAL,)	JURY TRIAL REQUESTED
et al.,)	
)	
Defendants.)	

STATE DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION TO STRIKE

State Defendants Ruth Ann Minner and Stanley W. Taylor ("State Defendants") hereby oppose Plaintiff's Motion to Strike [D.I. 28], and in support thereof, state as follows:

1. This *pro se* prisoner civil rights action was filed on January 16, 2007. [D.I. 2].
2. On June 25, 2007, Megan T. Mantzavinos, Esquire of Marks, O'Neill, O'Brien & Courtney, P.C., entered her appearance on behalf of Correctional Medical Services. [D.I. 22]. On July 9, 2007, undersigned counsel entered her appearance on behalf of State Defendants and also filed an Answer to the Complaint on State Defendants' behalf. [D.I. 23, 24]. On July 11, 2007, Patrick G. Rock of Marks, O'Neill, O'Brien & Courtney, P.C., entered his appearance on behalf of Correctional Medical Services. [D.I. 25]. On July 18, 2007, Ms. Mantzavinos and Mr. Rock filed an Answer to the Complaint on behalf of Correctional Medical Services, Gina Wolken and Dr. Niaz. The only remaining named defendant, Dr. Ali, has not been served with the Complaint.

[D.I. 14]. Plaintiff has also named several John Doe defendants, who have not been served. [D.I. 15, 16].

3. Plaintiff has moved to strike State Defendants' Answer to the Complaint on the grounds that the document was not properly served. Plaintiff also asks for entry of default against State Defendants and several other items of relief.

4. The Certificate of Service to the State Defendants' Answer indicates that the Answer was filed electronically on July 9, 2007 using CM/ECF. *See* D.I. 24 attached hereto as Exhibit A. In addition, the document was mailed by U.S. mail to Plaintiff. The Certificate of Service does not explicitly state that service was made upon Ms. Mantzavinos, counsel who entered her appearance for Correctional Medical Systems prior to July 9, 2007.

5. However, as set forth in this Court's Revised Administrative Procedures Governing Filing and Service by Electronic Means, whenever a pleading is filed electronically, a Notice of Electronic Filing ("NEF") is automatically generated and sent to all other parties of record. Transmission of the NEF constitutes service of the filed document. CM/ECF Administrative Procedures at E(1) and E(2) (attached hereto as Exhibit B). Thus, by virtue of the electronic filing of the document, counsel of record for Correctional Medical Systems was served with State Defendants' Answer to the Complaint.

6. Plaintiff argues that the relief he seeks is warranted because State Defendants failed to serve First Correctional Medical, Dr. Niaz, Gina Wolken and Dr. Ali. However, the docket indicates that First Correctional Medical has been terminated as a defendant. *See* Docket attached hereto as Exhibit C. Further, the docket does not

reflect service, or entry of appearance, as to any of these named defendants prior to July 9, 2007. Thus, as of July 9, 2007, these defendants could not be considered parties to this action, and State Defendants were not required to make service upon them. *See* Fed. R. Civ. P. 5(a).

7. Plaintiff's Motion to Strike is without merit, and Plaintiff is not entitled to any relief.

WHEREFORE, State Defendants respectfully request that this Court deny Plaintiff's Motion to Strike.

**STATE OF DELAWARE
DEPARTMENT OF JUSTICE**

/s/ Eileen Kelly
Eileen Kelly, I.D. No. 2884
Deputy Attorney General
Carvel State Office Building
820 N. French Street, 6th Floor
Wilmington, DE 19801
(302) 577-8400
eileen.kelly@state.de.us
Attorney for State Defendants

Date: July 30, 2007

CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2007, I electronically filed *State Defendants' Response to Plaintiff's Motion to Strike* with the Clerk of Court using CM/ECF, which will send notification to Megan T. Mantzavinos, Esquire and Patrick G. Rock, Esquire. I hereby certify that on July 30, 2007, I have mailed by United States Postal Service, the document to the following non-registered party: William Joseph Webb, Jr.

/s/ Eileen Kelly
Deputy Attorney General
Department of Justice
820 N. French St., 6th Floor
Wilmington, DE 19801
(302) 577-8400
eileen.kelly@state.de.us

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

WILLIAM JOSEPH WEBB, JR.,

Plaintiff,

V.

FIRST CORRECTIONAL MEDICAL,
et al.,

Defendants.

C. A. No. 07-31-GMS

JURY TRIAL REQUESTED

STATE DEFENDANTS' ANSWER TO THE COMPLAINT

COME NOW State Defendants Ruth Ann Minner and Stanley W. Taylor ("State Defendants"), by and through the undersigned counsel, and hereby answer the Complaint:

IV. Statement of Claim

1. Denied that State Defendants Minner and Taylor were aware of Plaintiff's medical needs. Denied that Plaintiff was denied medical care by State Defendants. Denied that Plaintiff was denied medical care by State Defendants to save money or for any other reason. State Defendants are currently without sufficient information to admit or deny allegations pertaining to Defendant Wolken. The allegations pertaining to Dr. Ali are not directed to State Defendants and therefore no response is required. To the extent that a response is required, the allegations are denied. The claims pertaining to grievances have been dismissed pursuant to Court Order dated May 7, 2007 [D.I. 9] and therefore no response is required. To the extent that a response is required, the allegations are denied.

2. The allegations pertaining to unidentified medical personnel are not directed to State Defendants and therefore no response is required. To the extent that a response is required, the allegations are denied. The claims pertaining to grievances have been dismissed pursuant to Court Order dated May 7, 2007 [D.I. 9] and therefore no response is required. To the extent that a response is required, the allegations are denied.

3. Denied that State Defendants Minner and Taylor were aware of Plaintiff's medical needs. Denied that State Defendants Minner and Taylor were negligent and further denied that they were deliberately indifferent to Plaintiff's medical needs. Denied that Plaintiff is or was under the care" of State Defendants Minner and Taylor. The remaining allegations set forth in this paragraph are not directed to State Defendants and therefore no response is required. To the extent that a response is required, the allegations are denied.

4. The allegations set forth in this paragraph are not directed to State Defendants and therefore no response is required. To the extent that a response is required, the allegations are denied.

5. The allegations set forth in this paragraph are not directed to State Defendants and therefore no response is required. To the extent that a response is required, the allegations are denied.

6. The claims set forth in this paragraph have been dismissed pursuant to Court Order dated May 7, 2007 [D.I. 9] and therefore no response is required. To the extent that a response is required, the allegations are denied.

7. The allegations pertaining to medical providers and unidentified medical personnel are not directed to State Defendants and therefore no response is required. To

the extent that a response is required, the allegations are denied. The claims pertaining to grievances have been dismissed pursuant to Court Order dated May 7, 2007 [D.I. 9] and therefore no response is required. To the extent that a response is required, the allegations are denied.

8. Denied. It is specifically denied that Plaintiff was subjected to cruel and unusual punishment.

RELIEF

9. It is specifically denied that Plaintiff is entitled to compensatory, punitive or any monetary damages.

10. It is specifically denied that Plaintiff is entitled to injunctive, declaratory or any other relief.

DEFENSES

11. Plaintiff has failed to state a claim upon which relief can be granted.

12. Plaintiff has failed to exhaust his administrative remedies.

13. State Defendants are immune from liability under the Eleventh Amendment.

14. State Defendants are entitled to qualified immunity.

15. As to any claims under state law, State Defendants are entitled to immunity under the State Tort Claims Act, 10 *Del. C.* § 4001, *et seq.*

16. As to any claims under state law, State Defendants are entitled to sovereign immunity.

17. Insufficiency of service of process.

18. Insufficiency of process.

19. Lack of jurisdiction over the person and subject matter.

WHEREFORE, State Defendants respectfully request that judgment be entered in their favor and against Plaintiff as to all claims and that attorney fees be awarded to them.

STATE OF DELAWARE
DEPARTMENT OF JUSTICE

/s/ Eileen Kelly
Eileen Kelly, I.D. #2884
Deputy Attorney General
Carvel State Office Building
820 North French Street, 6th Floor
Wilmington, Delaware 19801
(302) 577-8400
eileen.kelly@state.de.us
Attorney for State Defendants

Date: July 9, 2007

CERTIFICATE OF SERVICE

I hereby certify that on July 9, 2007, I electronically filed *Answer to the Complaint* with the Clerk of Court using CM/ECF. I hereby certify that on July 9, 2007, I have mailed by United States Postal Service, the document to the following non-registered party: William Joseph Webb, Jr.

/s/ Eileen Kelly
Deputy Attorney General
Department of Justice
820 N. French St., 6th Floor
Wilmington, DE 19801
(302) 577-8400
eileen.kelly@state.de.us

Answers to Complaints

1:07-cv-00031-GMS Webb v. First Correction Medical et al

PaperDocuments

U.S. District Court

District of Delaware

Notice of Electronic Filing

The following transaction was entered by Kelly, Eileen on 7/9/2007 at 12:13 PM EDT and filed on 7/9/2007

Case Name: Webb v. First Correction Medical et al

Case Number: 1:07-cv-31

Filer: Stanley W. Taylor

Ruth Ann Minner

Document Number: 24

Docket Text:

ANSWER to Complaint with Jury Demand by Ruth Ann Minner, Stanley W. Taylor.(Kelly, Eileen)

1:07-cv-31 Notice has been electronically mailed to:

Eileen Kelly eileen.kelly@state.de.us

Megan Trocki Mantzavinos mmantzavinos@mooclaw.com

1:07-cv-31 Notice has been delivered by other means to:

William Joseph Webb, Jr
SBI #256056
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1079733196 [Date=7/9/2007] [FileNumber=412124-0]
[0a3163a88594ef7407ce7e662a157892d253153fe74ef2defb8822aaf84469aadad38
6f5e9306fb78dcb69100900567a1be03f30b43a99190b872cf549042dcf]]

EXHIBIT B

- (2) The Clerk's Office will return to counsel for the plaintiff a signed and sealed summons for service of process. A party may not electronically serve a civil complaint, but shall effect service in the manner consistent with Fed.R.Civ.P.4.

(D) Electronic Filing

- (1) Electronic transmission of a document to CM/ECF, together with the transmission of a Notice of Electronic Filing (NEF) from the Court, constitutes filing of the document for all purposes of the Federal Rules of Civil Procedure and constitutes entry of the document on the docket maintained by the Clerk pursuant to Fed.R.Civ.P.58, Fed.R.Civ.P.79 and Fed.R.Crim.P.55.
- (2) Before filing a scanned document with the Court, a user must verify its legibility.
- (3) A document filed electronically shall be deemed filed at the time and date stated on the NEF received from the Court. CM/ECF will calculate all response deadlines from the date on the NEF.
- (4) All pleadings filed electronically shall be titled in accordance with the approved dictionary of civil or criminal events listed in CM/ECF.

(E) Service of Electronically Filed Documents

- (1) Whenever a pleading or other document is filed electronically, CM/ECF will automatically generate and send a NEF to the user and to all other attorneys or parties of record who are registered as users in CM/ECF. The user(s) shall retain a paper or digital copy of the NEF, which shall serve as the Court's datestamp and proof of filing.
- (2) Transmission of the NEF shall constitute service of the filed document and shall be deemed to satisfy the requirements of Fed.R.Civ.P.5(b)(2)(D), Fed.R.Civ.P.77(d), Fed.R.Crim.P.49(b) and D. Del. LR 5.2.
- (3) Attorneys who have not yet registered as users with CM/ECF, as well as pro se litigants not registered with CM/ECF, shall be served a paper copy of any electronically filed pleading or other document in accordance with the provisions of Fed.R.Civ.P.5.
- (4) In cases involving pro se parties, all documents filed using CM/ECF shall include a certificate of service identifying the manner in which the service on each party was accomplished. A sample certificate of service form is attached as Form A.
- (5) Service by electronic means shall be treated the same as service by mail for the purpose of adding three (3) days to the prescribed period to respond in accordance with Fed.R.Civ.P.6(e).

EXHIBIT C

**U.S. District Court
District of Delaware (Wilmington)
CIVIL DOCKET FOR CASE #: 1:07-cv-00031-GMS**

Webb v. First Correction Medical et al
Assigned to: Honorable Gregory M. Sleet
Related Cases: 1:00-cv-00766-GMS
1:02-cv-00521-GMS
1:02-cv-00583-GMS
1:03-cv-00974-GMS
1:06-cv-00734-GMS

Date Filed: 01/16/2007
Jury Demand: Both
Nature of Suit: 555 Prisoner: Prison
Conditions
Jurisdiction: Federal Question

Cause: 42:1983 Prisoner Civil Rights

Plaintiff

William Joseph Webb, Jr.

represented by **William Joseph Webb, Jr.**
SBI #256056
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977
PRO SE

V.

Defendant

First Correction Medical
TERMINATED: 07/13/2007

Defendant

Correctional Medical Services

represented by **Megan Trocki Mantzavinos**
Marks, O'Neill, O'Brien & Courtney, P.C.
913 North Market Street
Suite 800
Wilmington, DE 19801
(302) 658-6538
Email: mmantzavinos@mooclaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Patrick G. Rock
Marks, O'Neill, O'Brien & Courtney, P.C.
913 North Market Street
Suite 800
Wilmington, DE 19801
(302) 658-6538
Email: prock@mooclaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Governor Ruth Ann Minner

represented by **Eileen Kelly**
Department of Justice
820 N. French Street, 6th Floor
Wilmington, DE 19801
(302) 577-8400
Email: eileen.kelly@state.de.us
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Commissioner Stanley W. Taylor

represented by **Eileen Kelly**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Bureau Chief Paul W. Howard
TERMINATED: 05/07/2007

Defendant

Ms. Gina Wolken

represented by **Patrick G. Rock**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Dr. Ali

Defendant

Dr. Niaz

represented by **Patrick G. Rock**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Dr. John Doe

Defendant

Dr. Jane Doe

Defendant

Correctional Medical Services
Grievance Hearing Staff
TERMINATED: 05/07/2007

Defendant

Ms. Rosalie Vargas
TERMINATED: 05/07/2007

Defendant

John Does**Defendant****Jane Does**

Date Filed	#	Docket Text
01/16/2007	<u>1</u>	MOTION for Leave to Proceed in forma pauperis - filed by William Joseph Webb, Jr. (Attachments: # <u>1</u> Financial Statement)(els) (Entered: 01/17/2007)
01/16/2007	<u>2</u>	COMPLAINT filed pursuant to 42:1983 with Jury Demand against First Correction Medical, Correctional Medical Services, Ruth Ann Minner, Stanley W. Taylor, Paul W. Howard, Gina Wolken, Ali, Niaz, John Doe, Jane Doe, Correctional Medical Services (Grievance Hearing Staff), Rosalie Vargas, John Does, Jane Does - filed by William Joseph Webb, Jr.(els) (Entered: 01/17/2007)
01/16/2007	<u>3</u>	Notice of Availability of a U.S. Magistrate Judge to Exercise Jurisdiction (els) (Entered: 01/17/2007)
01/16/2007	<u>4</u>	Letter to Clerk from William J. Webb, Jr. regarding copies of Complaint - re <u>2</u> Complaint,. (els) (Entered: 01/17/2007)
01/24/2007		Case assigned to Judge Gregory M. Sleet. Please include the initials of the Judge (GMS) after the case number on all documents filed. (rjb) (Entered: 01/24/2007)
02/06/2007	<u>5</u>	ORDER granting Motion to Proceed IFP. Filing Fee of \$350.00 Assessed. An initial partial filing fee of \$5.29 shall be required. Plaintiff shall return the attached payment authorization within 30 days. Failure to return payment authorization shall result in dismissal of action without prejudice. (Copy to pltf.). Notice of Compliance deadline set for 3/12/2007. Signed by Judge Gregory M. Sleet on 2/6/07. (mmm) (Entered: 02/06/2007)
02/23/2007	<u>6</u>	Authorization by William Joseph Webb, Jr requesting Prison Business Office to disburse payments to the Clerk of the Court. (copy of assessment order and authorization to Prison Business Office) (asw) (Entered: 02/26/2007)
03/13/2007		Partial Filing Fee Received from William Joseph Webb, Jr: \$ 5.29, receipt number 146834 (copy to business office) (rbe) (Entered: 03/14/2007)
05/03/2007	<u>7</u>	Letter to Clerk of Court from William J. Webb, Jr. regarding partial filing fees. (mmm) (Entered: 05/04/2007)
05/07/2007	<u>8</u>	Letter to William J. Webb, Jr. from Clerk of Court regarding payment of filing fees - re <u>7</u> Letter. (mmm) (Entered: 05/07/2007)
05/07/2007	<u>9</u>	MEMORANDUM AND SERVICE ORDER. The claims against the defendants Bureau Chief Paul W. Howard, Correctional Medical Services Grievance Hearing Staff, and Rosalie Vargas are DISMISSED without prejudice as therein set forth and these defendants are dismissed from this action. All grievance claims against First Correctional Medical, Correctional Medical Services, Gina Wolken, and John/Jane Doe are DISMISSED without prejudice. The state medical malpractice claim against Dr. Niaz is DISMISSED without prejudice. Signed by Judge Gregory M. Sleet on 5/7/07. (mmm) (Entered: 05/07/2007)
05/14/2007		USM 285 forms received for all defendants and the Attorney General of the State of Delaware. (ead) (Entered: 05/14/2007)

05/14/2007	<u>10</u>	Letter to Clerk of Court from William J. Webb, Jr. regarding request for receipt - re 285 Forms Received. (mmm) (Entered: 05/15/2007)
05/15/2007		EXIT docket sheet to the plaintiff on 5/15/07. (mmm) (Entered: 05/15/2007)
05/17/2007	<u>11</u>	Letter to William Joseph Webb, Jr. from Clerk of Court. The court has received all required USM-285 forms. The complaint, along with the USM-285 forms, will be forwarded to the U.S. Marshal Service for service in accordance with the Court's orders. (mmm) (Entered: 05/17/2007)
05/17/2007		Exit USM 285 forms to U.S. Marshal (mmm) (Entered: 05/17/2007)
05/21/2007	<u>12</u>	USM 285 Returned Unexecuted as to Stanley W. Taylor (retired) (mmm) (Entered: 05/22/2007)
05/21/2007	<u>13</u>	USM 285 Returned Unexecuted as to Dr. Ali. (mmm) (Entered: 05/22/2007)
05/21/2007	<u>14</u>	USM 285 Returned Unexecuted as to Dr. Niaz. (mmm) (Entered: 05/22/2007)
05/21/2007	<u>15</u>	USM 285 Returned Unexecuted as to John Doe, Jane Doe. (mmm) (Entered: 05/22/2007)
05/21/2007	<u>16</u>	USM 285 Returned Unexecuted as to Dr. John Does, Dr. Jane Does. (mmm) (Entered: 05/22/2007)
05/25/2007	<u>17</u>	USM 285 Returned Executed. Ruth Ann Minner served on 5/24/2007, answer due 6/13/2007. (mmm) (Entered: 05/29/2007)
06/05/2007	<u>18</u>	Letter to Honorable Gregory M. Sleet from William J. Webb, Jr. requesting a 45-day extension of time to file an affidavit. (mmm) (Entered: 06/08/2007)
06/12/2007	<u>19</u>	Letter to Clerk of Court from William J. Webb, Jr. regarding notice of filing with the Department of Justice. (mmm) (Entered: 06/15/2007)
06/18/2007		SO ORDERED re 18 Letter. Signed by Judge Gregory M. Sleet on 6/18/07. (mmm) (Entered: 06/18/2007)
06/20/2007	<u>20</u>	WAIVER OF SERVICE with 285 form returned executed for Correctional Medical Services. Waiver sent on 6/18/2007, answer due 8/17/2007. (mmm) (Entered: 06/20/2007)
06/25/2007	<u>21</u>	USM 285 Returned Executed. Attorney General of the State of Delaware served on 6/21/07. (mmm) (Entered: 06/25/2007)
06/25/2007	<u>22</u>	NOTICE of Appearance by Megan Trocki Mantzavinos on behalf of Correctional Medical Services (Attachments: # <u>1</u> Certificate of Service to Defendant Correctional Medical Services's Notice of Appearances of Megan T. Mantzavinos, Esquire and Ryan M. Ernst, Esquire on behalf of Defendant Correctional Medical Services)(Mantzavinos, Megan) (Entered: 06/25/2007)
07/09/2007	<u>23</u>	NOTICE of Appearance by Eileen Kelly on behalf of Ruth Ann Minner, Stanley W. Taylor (Kelly, Eileen) (Entered: 07/09/2007)
07/09/2007	<u>24</u>	ANSWER to Complaint with Jury Demand by Ruth Ann Minner, Stanley W. Taylor. (Kelly, Eileen) (Entered: 07/09/2007)
07/11/2007	<u>25</u>	NOTICE of Appearance by Patrick G. Rock on behalf of Correctional Medical Services (Attachments: # <u>1</u> Certificate of Service to Entry of Appearance of Patrick G. Rock, Esquire on behalf of Defendant Correctional Medical Services)(Rock, Patrick) (Entered: 07/11/2007)

		07/11/2007)
07/18/2007	<u>26</u>	ANSWER to Complaint with Jury of Twelve Demanded by Correctional Medical Services, Gina Wolken, Niaz. (Attachments: # <u>1</u> Certificate of Service to Defendants' Correctional Medical Services, Gina Wolken, and Dr. Niaz, Answer to Amended Complaint)(Rock, Patrick) (Entered: 07/18/2007)
07/19/2007	<u>27</u>	Letter to Clerk of Court from William Joseph Webb, Jr. regarding motion to strike. (mmm) (Entered: 07/23/2007)
07/19/2007	<u>28</u>	MOTION to Strike 26 Answer to Complaint - filed by William Joseph Webb, Jr. (mmm) (Entered: 07/23/2007)

PACER Service Center			
Transaction Receipt			
07/30/2007 13:53:25			
PACER Login:	dj0024	Client Code:	doc
Description:	Docket Report	Search Criteria:	1:07-cv-00031-GMS Start date: 1/1/1970 End date: 7/30/2007
Billable Pages:	3	Cost:	0.24